IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.
No. 190.

WILLIAM S. SELDEN, WILLIAM H. ANDERSON, AND CLARENCE B. GILPIN, Appellants,

vs.

ANDREW J. MONTAGUE, GOVERNOR OF VIRGINIA; DAVID Q. EGGLESTON, SECRETARY OF THE COMMONWEALTH OF VIRGINIA; MORTON MARYE, AUDITOR OF PUBLIC ACCOUNTS OF VIRGINIA, AND OTHERS, Appellees.

On Appeal from the Circuit Court of the United States for the Eastern District of Virginia.

Motion to Dismiss Appeal, or to Affirm Decree of the Lower Court.

Now come the appellees, by their counsel, and move the Court to dismiss the appeal in the above- entitled cause, upon the ground that there is now no actual controversy involving real and substantial rights between the parties to the record, and no subject matter upon which the judgment of this court can operate; or to affirm the judgment of the Circuit Court of the United States for the Eastern District of Virginia in this cause, on the ground that although the record shows that this court has jurisdiction, the questions on which the jurisdiction depends are so frivolous as not to need further argument.

William A. Anderson
Frank W. Christian
Counsel for Appellees

NOTICE OF MOTION TO DISMISS OR AFFIRM.

To ~~Messrs.~~ John S. Wise, Esq.,

Counsel for the Appellants:

Please take notice, that on Monday, the 29th day of February, 1904, at the opening of the Court, or as soon thereafter as counsel can be heard, the above motion to dismiss the appeal, or to affirm the decree of the lower court, will be submitted to the Supreme Court of the United States at Washington, in the District of Columbia, for the decision of said court thereon.

Annexed hereto is a copy of the brief of argument, which will be submitted with said motion in support thereof.

William A. Anderson
Frank W. Christian
Counsel for Appellees.

BRIEF FOR THE APPELLEES IN SUPPORT OF MOTION TO DISMISS.

The motion to dismiss this appeal is founded upon the fact that the acts sought to be enjoined have been performed by the defendants, and that nothing remains to be done upon which any decree of the court can operate. The lower court refused the injunction prayed for and dismissed the plaintiff's bill; and, thereupon the defendants, constituting the Board of State Canvassers, met, canvassed the returns, and the defendant, the Secretary of the Commonwealth, delivered writs of election to the persons who had been elected members of the House of Representatives at the election held on Novembr the 4th, 1902.

One of the persons voted for at said election was the Honorable Carter Glass, who was elected to fill an unexpired term in the 57th Congress. He and nine others were also elected for full terms in the 58th Congress. The Honorable Carter Glass appeared and was admitted to his seat in the House of Representatives in December, 1902, for the unexpired term, and he and all the other representatives from Virginia appeared and were admitted to representation in the 58th Congress.

Of these facts, the court may take judicial cognizance. This being so, there is nothing remaining to be done upon which the decree of the court can operate in this cause.

Opposing counsel contend, that the court may still entertain jurisdiction of this case and decide the questions raised by the bill, for the reason that the bill avers the election of November the 4th, 1902, to have been null and void, and asks for a declaration of the court upon that question, which will involve the future rights of the plaintiffs. But it is a complete answer to this suggestion to say that any declaration by the court touching the validity or invalidity of the election held in November, 1902, or touching the validity or invalidity of the Constitution and ordinance of registration of the State of Virginia, or touching the future right of the complainants to register or to vote, would constitute a decree upon a purely moot or abstract question, which this court will not undertake to do.

See *Mills* vs. *Green*, 159 U. S., 651, and the cases cited there; *Codlin* vs. *Kohlhausen*, 181 U. S., 151; *Tennessee* vs. *Condon*, 189 U. S., 64.

WILLIAM A. ANDERSON,
Attorney-General of Virginia.

FRANK W. CHRISTIAN,
Counsel for the Appellees.

State of Virginia,
City of Richmond, to-wit:

I, David Q. Eggleston, being duly sworn, do hereby state as follows:

I was, in the year 1902, Secretary of the Commonwealth of Virginia, and as such a member of the Board of State Canvassers of Virginia. After the Circuit Court of the United States for the Eastern District of Virginia rendered its judgment and decree dismissing the petition for a writ of prohibition and the bill praying for an injunction in the two causes of "William H. Jones and others against Andrew J. Montague, Governor of Virginia, and others," and "William S. Selden and others against Andrew J. Montague, Governor of Virginia, and others," to-wit, on the 29th day of November, 1902, the said Board of State Canvassers of Virginia convened at the office of the Secretary of the Commonwealth of Virginia, and, in accordance with the law of the State of Virginia in such cases, proceeded, upon the certified abstracts on file in the office of the Secretary of the Commonwealth, to examine and make statements of the whole number of votes given at the election held on November 4th, 1902, for representatives in Congress; which statements showed the names of persons to whom votes had been given at said election for said offices, and the whole number given to each, distinguishing the several districts, cities and counties in which they were given; and the said board certified such statements to be correct, and subscribed their names thereto, and determined what persons had been, by the greatest number of votes, duly elected as representatives in Congress from Virginia; and endorsed and subscribed on said statements a certificate of such determination and delivered them to the Secretary of the Commonwealth of Virginia.

And I further state, that on the said 29th day of November, 1902, I, as Secretary of the Commonwealth of Virginia, recorded, in a suitable book kept by me in my office for that purpose, each certified statement and determination as made by the Board of State Canvassers, and on the same day made out and transmitted to each of the persons thereby declared to be elected representatives in Congress from the State of Virginia, a certificate of his election, certified by me under my seal of office.

David J. Eggleston Jr

I, John S. Eggleston, a Notary Public in and for the city of Richmond and State of Virginia, hereby certify that the foregoing statement was subscribed and sworn to before me, in my said city and State, on this 28th day of January, 1904.

Given under my hand and official seal this 28th day of January, 1904.

John S. Eggleston

Notary Public.

My commission as a Notary Public expires on the 14th day of March, 1905.